did not adopt the doctrine of the Illinois and Wisconsin courts, which is more in keeping with the policy of Workmen's Compensation Acts by extending their application to more cases of employment without excusing the employer from the consequences of his illegal act.

POLICE POWER—ABUTTING OWNER'S RIGHT OF ACCESS.—The plaintiff, a proprietor of a garage on the corner of a busy traffic street and a residence street, sought to enjoin the Commissioners of the District of Columbia from enforcing an order closing plaintiff's traffic street entrance for the safety of pedestrians. The traffic street entrance was much more valuable than the other entrance which was insufficient for the business. The commissioners had not interfered with a nearby garage which had an entrance only on the traffic street. *Held,* injunction granted. *Commissioners of D. C.* v. *O'Donoghue Bros.* (D. C. Dist. Col. 1921) 276 Fed. 636.

An abutter's right of access is property in the nature of an easement. See *Vanderburgh* v. *Minneapolis* (1906) 98 Minn. 329, 336, 108 N. W. 480, 481. It will be protected even though there is access to another street. *Foster Co.* v. *Arkansas R. R.* (1908) 20 Okla. 583, 95 Pac. 224, 100 Pac. 1110; *Fort Scott, W. & W. R. R.* v. *Fox* (1889) 42 Kan. 490, 22 Pac. 583; *cf. K. N. & D. R. R.* v. *Cuykendall* (1889) 42 Kan. 234, 21 Pac. 1051. After stating this familiar principle, the court in the principal case simply asserts that the Commissioner's proposed act was not mere "regulation," but "prohibition," or a "taking," which could not be exercised without compensation. Courts, realizing the effect of constant economic changes, dislike to define the precise limits of police power. See *Eubank* v. *Richmond* (1912) 226 U. S. 137, 142, 143, 33 Sup. Ct. 76. Regulation of property is sanctioned to preserve public health, safety and morals. *Morgan* v. *Louisiana* (1886) 118 U. S. 455, 6 Sup. Ct. 1114 (quarantine laws); *Welch* v. *Swasey* (1909) 214 U. S. 91, 29 Sup. Ct. 567 (reasonable limitation of height of buildings). But it is not permissible for aesthetic purposes. *Chicago* v. *Gunning System* (1905) 214 Ill. 628, 73 N. E. 1035. Recently, regulations to promote public convenience or general welfare and prosperity have been allowed under the police power. *Chicago & Alton R. R.* v. *Tranbarger* (1915) 238 U. S. 67, 35 Sup. Ct. 678. Even a positive "taking" is permissible where the property is inherently dangerous. *Harrington* v. *Providence Board of Aldermen* (1897) 20 R. I. 233, 38 Atl. 1. But arbitrary discrimination makes a statute invalid. *State* v. *New Orleans* (1904) 113 La. 371, 36 So. 999. A restriction of easements, amounting practically to confiscation, is unconstitutional. *People ex rel. Dilzer* v. *Calder* (1903) 89 App. Div. 503, 85 N. Y. Supp. 1015. This is true even though it benefits public health. See *C. B. & Q. R. R.* v. *Commissioners* (1906) 200 U. S. 561, 592, 593, 26 Sup. Ct. 341. All regulation is in a sense a "taking," but the court in holding that substantial confiscation of an easement of access is unconstitutional, is in harmony with current authority, especially since the discrimination between the garages showed that the increased safety of pedestrians was insufficiently imperative to counterbalance such a serious deprivation of private property.

SALES—IMPLIED WARRANTY OF MERCHANTABLE QUALITY.—The buyers, who for years had sold mineral water in the Argentine, known as "Webb's Indian Tonic," manufactured by the sellers, ordered the present shipment. The water, as the sellers knew, was for sale in the Argentine. It contained, unknown to the buyers, a small percentage of salicylic acid, which by a law of the Argentine was unsalable. The sellers had no knowledge of this law. The goods were condemned in the Argentine as unfit for human consumption. The buyers brought this action, alleging that the sellers had broken the implied warranty provided

by the British Sale of Goods Act § 14(1), that the goods should be reasonably fit for the purpose for which they were required, and also that the sellers had broken the implied warranty in § 14(2), that the goods should be of merchantable quality. *Held,* for the sellers. *Summer Permain & Co.* v. *Webb & Co.* [1922] 1 K. B. 55.

At common law in England there was an implied warranty of merchantable quality in sales by description. *Jones* v. *Just* (1868) L. R. 3 Q. B. 197. Some American jurisdictions followed this rule. *Murchie* v. *Cornell* (1891) 155 Mass. 60, 29 N. E. 207. The majority held *contra,* where the seller was not the manufacturer. *Whitman* v. *Jacobson* (1909) 119 N. Y. Supp. 246. The English view has been adopted by the British and American Sales Acts. (1893) St. 56 & 57 Vict. c. 71, § 14 (2); Uniform Sales Act § 15 (2). If the buyer makes known to the seller the purpose for which he requires the goods and relies on the latter's skill or judgment, there is an implied warranty of reasonable fitness for such purpose. *Southern Brass & Iron Co.* v. *Exeter Mach. Works* (1902) 109 Tenn. 67, 70 S. W. 614; (1893) St. 56 & 57 Vict. c. 71, § 14 (1); Uniform Sales Act, § 15 (1). While the questions, whether the goods are of merchantable quality and whether they are fit for the use intended, usually arise in the same case, they are, nevertheless, entirely independent. The instant case is sound. The buyers, who had handled the same goods for years, did not rely on the sellers' judgment. Moreover, since the goods were sold under a trade name, the buyers could not recover under § 14 (1) of the British Act. *Cf.* Uniform Sales Act § 15 (2). The fair interpretation of § 14 (2) is that the goods be of the quality agreed upon in the contract and not that the goods be salable in the intended market, unless such salability is expressly or impliedly made one of the requisites. Merchantable quality means merely that the goods must satisfy the description in the contract, so that a tender of them to a buyer of goods of that description would be a good tender. Moreover, it seems reasonable that the risk of knowing the laws of the intended market should be upon the buyer.

SHERMAN ANTI-TRUST ACT—"OPEN COMPETITION PLAN."—The defendants were three hundred and sixty-five hardwood manufacturers operating five per cent of the mills in this country and producing one-third of the total output. They were members of an "Open Competition Plan" in accordance with which they made regular reports to a manager of statistics giving a full account of all sales which each made, a production report, price-lists and inventory. The central office sent its own agents to check up the stock of each of its members. These reports were digested and a working summary furnished to each member, together with suggestions as to the probable operations of the market. *Held,* Mr. Justice Brandeis, Mr. Justice McKenna, Mr. Justice Holmes dissenting, this is a combination in restraint of trade, and illegal under the Sherman Anti-Trust Act. *American, etc. Lumber Co.* v. *United States* (1921) 42 Sup. Ct. 114.

The early cases under this act held every combination in restraint of interstate commerce unlawful. *United States* v. *Joint Traffic Ass'n* (1898) 171 U. S. 505, 19 Sup. Ct. 25. Later, combinations not in undue restraint of commerce were declared legal. *Cf. Standard Oil Co.* v. *United States* (1911) 221 U. S. 1, 31 Sup. Ct. 502. There have been two types of cases. (1) The big unit combination effected through purchase or merger is not illegal if it does not raise prices unduly or crush budding competitors by unfair methods. *United States* v. *United Shoe Machinery Co.* (1918) 247 U. S. 32, 38 Sup. Ct. 473 (controlled whole industry); *United States* v. *United States Steel Corp.* (1920) 251 U. S. 417, 40 Sup. Ct. 293 (fifty per cent of its industry). (2) But agreements between independent concerns of the same economic effect as the combinations, are frowned upon.